IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1584 OF 2006

1. Manda Ananda Salunkhe,
   New Police Line, Mulund Police
   Station Compound, Room No. 2,
   N.S. Road, Mulund (W),
   Mumbai 400 080.

2. Dropadabai Laxman Nalawade,
   Vijayanagar Yedge Chawl, Room No.
   34, B.R. Road, Pipeline, Mulund
   (West),Mumbai 400 080.

3. Mrs.Jatin Enterprises,
   Prop. Ashok Balaji Sawant,
   Shree Laxmi Park No. 1,
   Bldg. No. 3, B-301,
   Lokmanya Nagar, Thane. ... Petitioners

Versus

1. Yeshwant Sahakari Bank Ltd.
   (In liquidation), through Liquidator,
   Shri. R.B. Pawar, Dy. Registrar,
   C.S., at Venu Apartments, Block
   No. 2, B.J. Devrukhkar Road,
   Dadar (East), Mumbai 400 014.

2. The Additional Commissioner,
   for Cooperation & Registrar of
   Cooperative Societies, Maharashtra
   State, Central Bldg. Annexe, Pune 1.

3. The Commissioner for Cooperation and
   Registrar of Cooperative Societies,
   Maharashtra State, Central Building
   Annexe, Pune 1.

4. Prataprao Krishna Salunkhe,
   Ex-Chairman of Yeshwant Sahakari
   Bank Ltd. (In Liquidation), having
   his office lat 10/6, Sahakar Nagar,
   Wadala, Mumbai 400 031.

5. The Depositors Association
   Yeshwant Sahakari Bank Ltd.
   (In Liquidation) having their
   office at Kasa Maria, Bamanwada,
   Sahar, Mumbai 400 099.

6. Sabasad Seva Sangh,
   Yeshwant Sahakari Bank Ltd.

(In Liquidation), having their Office at Chawl No. 23/24, K.D. Gaikwad Nagar, P.Y. Thorat Marg, Chembur, MUmbai.

7. The Reserve Bank of India, Mumbai Regional Office, Urban Banks Dept, 2nd Floor, Garment House, Worli, Mumbai 400 018.

8. The Hon'ble Minister for Cooperation, Government of Maharashtra, Cooperation and Textile Department, Mantralaya, Mumbai 400 032.

9. The State of Maharashtra, through Government Pleader, High Court, Appellate Side, Mumbai. ... Respondents

Mr. A.S. Desai for Petitioner.

Mr. E.P. Bharucha, Sr. Counsel with Mr. O.P. Pandya for R. No. 1.

Mr. P.K. Dhakephalkar, Sr. Counsel with Mr. G.W. Mattows, A.G.P. for R. Nos. 8 and 9.

Mr. A.Y. Sakhare, Sr. Counsel with Mr. Sidhartha Karpe for R. Nos. 4 and 5.

Dr.Virendra Tulzapurkar, Sr. Counsel with Mr. A. Munshi and Mr. Kunal Damle i/by Udwadia & Udeshi for R. No.7.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: SEPTEMBER 21, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

. The Petitioners have averred that they are the depositors and shareholders of Respondent No. 1 a Cooperative Bank, registered under the provisions of the Maharashtra Cooperative Societies Act, 1960

(hereinafter referred to as "MCS Act") and now under liquidation. The Bank was registered in the year 1968 and commenced business of banking under the provisions of the Banking Regulation Act, since 1968. It has membership of 8300 persons and number of depositors is around 4,000 and deposits to the tune of Rs. 1 Crore, 38 lakhs. The Respondent No. 4 was on the Board of Directors of the bank since its inception. In the year 1992, the Bank was declared a weak bank by the Reserve Bank of India. The Reserve Bank of India on 4.2.2003 cancelled the Banking licence of Respondent No. 1. On 5.3.2003, the Commissioner for Cooperative and Registrar of Cooperative Societies, Maharashtra State, Pune on the recommendations of the Reserve Bank of India issued an order under section 110(A)(2) of the M.C.S. Act, 1960 and appointed Liquidator. Respondent No. 4 who is Ex Chairman had filed Writ Petition No. 861 of 2003, challenging the order of cancellation of the Banking Licence. No stay was granted to the impugned order. The Liquidator was however, directed not to sell the property and amalgamate the Bank and further granted liberty to the Respondent No. 4 to file appeal challenging the order of cancelling the banking licence before the Appellate Authority. The Petition was disposed of with those directions. The Respondent No. 4 preferred an appeal against the order of

cancellation of Banking Licence by R.B.I. The appeal was dismissed by R.B.I.

2. Aggrieved by the order of dismissal of the appeal challenging the order of cancellation of Banking Licence, Respondent No. 4 filed writ Petition challenging the order of the appellate authority dated 3.2.2004. That Petition was disposed of with liberty to Respondent No. 4 to make application to R.B.I. seeking permission to convert Respondent No. 1 bank into credit society. By communication of 10.09.2004, the RBI rejected the said representation giving its reasons and pointing out that as on March 31, 2001, the accumulated losses were to the tune of Rs.116.60 lacs. The R.B.I. also noted that the proposal to convert the bank into credit society will not improve the financial health of the bank since the Bank's net worth was negative and the interest of the small depositors would be adversely affected as DICGC insurance will not be available to depositors. To complete the narration it may be pointed out that the RBI by their further communication dated 30.05.2006 informed Respondent No. 4 that the proposal to convert a UCB into cooperative society can be agreed to, if the UCB has repaid or has made provision for repayment of all deposits accepted by it and the UCB should sent notices to all the

non-member depositors for obtaining payment of balance standing to their credit and that the RBI should be satisfied that the bank is in a position to pay its non members and members as well. It was pointed out that the Bank was taken into liquidation on account of its negative net worth of Rs.18.66 lakh and erosion of deposits to the extent of 3.8% with reference to its position as on December 31, 2001 and therefore, RBI was not in a position to accede to the bank's request to allow it to convert itself into a cooperative society. As the affairs of a bank in liquidation are under the overall control of the liquidator, the Liquidator has to satisfy the RBI that the Bank has adequate resources to pay the depositors to consider the proposal.

. Respondent No. 4 had filed Petition being Writ Petition (L) No. 3060 of 2004 challenging the order passed by the Commissioner, appointing Liquidator dated 5.3.2003, the order passed by the R.B.I. cancelling Banking licence dated 4.2.2003 and the order passed by the RBI rejecting the permission to convert the Respondent No. 1 bank into credit society dated 10.9.2003. The Petitioners herein had taken out Chamber Summons in Writ Petition (L) No. 3060 of 2004 for joining them as parties.

3. On 1.4.2003 the Ex Chairman made an application

to the Chief Minister of Maharashtra for conversion of Respondent No. 1 bank into a Credit Society instead of liquidating the Bank. By order dated 26.3.2004 the Commissioner for Cooperation and Registrar/Respondnet No. 3, considering the letter of Member Seva Sangh, Yashvanta Sahakari Bank Ltd., the letter of Ex President of the Bank, as well as letter of Depositor Association, Yashwant Coop. Bank Ltd and letter of Hon'ble Chief Minister, Govt. of Maharashtra granted sanction to the proposal for permission to convert the cooperative Bank into Patpedhi (Credit Society) under Section 19 read with Rule 18 of the provisions of the M.C.S. Act and Rules, subject to what was set out therein, one of which was a resolution to be passed at the Annual General Body Meeting in respect of permission granted for opening Path Pedhi. On 8.4.2004 the Cooperative Commissioner and Registrar, Cooperative Societies, Maharashtra State, Pune intimated to the persons that the permission granted to convert the bank into credit society by the permission dated 26.3.2004 was cancelled.

. Respondent No. 4 and some others aggrieved by the order of the Commissioner dated 8.4.2004 preferred revision application before the Hon'ble Minister for cooperation. That came to be allowed by order dated 17.6.2006 which order is the subject

matter of the present petition.

4. It is the case of the Petitioners herein that the action of Respondent No. 8 in allowing the revision application was without jurisdiction and or acting without the authority of law as the revision itself was not maintainable and that Respondent No. 3 had withdrawn the order as it was contrary to the provisions of the Cooperative Societies Act. It is also submitted that for the purpose of conversion of the bank into credit society, the procedure under section 19 of the MCS Act 1960 should be first followed and the Respondent No. 8 without following the re-construction procedure under section 19 of the M.C.S. Act, could not have granted permission of conversion of bank into the credit society. It is further submitted that the Bank had gone into liquidation on 5.3.2003 and no general body meeting after that date has been held as the Liquidator had not called for a general body meeting and that Respondent No. 4 could not have relied on the resolution passed by the general body meeting of 2003. Respondent No. 4 Prataprao Salunkhe, has filed affidavit contending that the Petition is not bona fide and not filed on their own behalf but were acting as dummies for and on behalf of vested interests with the aim of destroying the Bank as an independent entity on account of political rivalry

between the Directors of Bank and the Directors of another Cooperative Bank. The Commissioner could not have reversed the order granting permission by order dated 8.4.2004 and it is in these circumstances that the appeal was preferred. The order of the Commissioner was stayed and subsequently set aside. By letters dated 27th June, 2006 and 5th July, 2006, the office of the Commissioner and Registrar of Cooperative Society has directed the Liquidator of the Respondent No. 1 Bank to initiate appropriate action as per Section 17 of the M.C.S. Act read with Rule 16 of the M.C.S. Rules, 1961. The other averments have been denied and the various steps taken by the Respondent to challenge the orders have also set out. It is not necessary to refer to those pleadings considering the controversy which is in issue.

5. We do not propose to go into the issue as to whether the revision before the Respondent No. 8 was maintainable. The real issue which arises is, whether the Respondent No. 3 and Respondent No. 8 could have granted permission for converting a bank in liquidation into a credit society under section 17 of the M.C.S. Act. We have heard the counsels who have addressed us. In the course of the hearing, we had asked the counsel for the liquidator as to whether his client is of the opinion that the

Bank can be transformed into a credit society. The learned counsel after taking instructions in the court from the Liquidator who was present, made a statement to the court, that his client is of the opinion that the Bank under liquidation cannot be converted into a credit society. On the next day of hearing, it was pointed out to us that that said liquidator has been removed and some other liquidator has been appointed. The learned counsel for the new liquidator made a statement as on that date, he has no instructions as to whether the bank can be transformed into a credit society. Pursuant to our directions, Mr. Anil Udhavrao Diggikar, Commissioner for Cooperative and Registrar of Cooperative Societies, Maharashtra State has filed an affidavit and he points out that the liquidator himself had sought that he be relieved as Liquidator of the Respondent No. 1 Bank vide his letter dated 2nd April, 2006 and thereafter by letter dated 16.8.2006 and it is in these circumstances, that he came to pass the order relieving the liquidator and appointing some other person as liquidator. We may note that though an affidavit has been filed stating reasons for relieving the liquidator and that too immediately on the next date after he had made statement to this court saying that the society cannot be reconstructed, it can be prima facie be reasonably believed that this has been done for

extraneous considerations unconnected with what is set out in the affidavit of Mr. Anil Diggikar, though it is remotely possible that the Commissioner considering the letters of the Liquidator which indicate that Respondent No. 4 was threatening him of committing suicide could have bonafidely relieved him. Considering the above, we do not propose to take any action against Mr. Anil Diggikar in the present proceedings in the absence of further proof.

6. We shall now address ourselves to the main issue. For that purpose we may reproduce Section 17 of the M.C.S. Act which reads as under :

> "17. Amalgamation, transfer, division or conversion of Societies - (1) A society may, with the previous approval of the Registrar, by resolution passed by two thirds majority of the members present and voting at a special general meeting held for the purpose, decide -
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> (a) to amalgamate with another society; (b) to transfer its assets and liabilities, in whole or in part, to any other society; (c) to divide itself into two or more societies; or (d) to convert itself into another class of society;

. Provided that when such amalgamation, transfer, division or conversion, aforesaid, involves a transfer of the liabilities of a society to any other society, no order on the resolution shall be passed by the Registrar, unless he is satisfied that :

(i) the society, after passing such resolution, has given notice thereof in such manner as may be prescribed to all its members, creditors, and other persons, whose interests are likely to be affected (hereinafter in this section referred to as "other interested persons"), giving them the option, to be exercised within one month from the date of such notice, of becoming members, of any of the new societies, or continuing their membership in the amalgamated or converted society, or demanding payment of their share or interest or dues, as the case may be;

(ii) all the members and creditors and other interested persons, have assented to the decision, or deemed to have assented thereto by virtue of any member or creditor or any other interested person failing to exercise

his option within the period specified in clause (i) aforesaid; and

(iii) all claims of members and creditors and other interested persons, who exercise the option within the period specified, have been met in full or otherwise satisfied."

. It will thus be clear that amalgamation, transfer or conversion requires the previous approval of the Registrar and a subsequent resolution passed by two-thirds majority of the members present and voting at a special general meeting held for the purpose of considering a resolution for converting itself into another class of society. No further order can be passed by the Registrar, untill he is satisfied that the requirements set out under Section 17(i), (ii) and (iii) are met. It will thus be clear that the first requirement is that the society must be in existence and its members pass a resolution by 2/3rd majority of those present and voting at a special general meeting held for that purpose. After that is done, the second requirement is that the Registrar must satisfy himself that the predicates of the proviso to Section 17 are met. This is the scheme of Section 17 of the M.C.S. Act.

. In so far as Section 19 of the M.C.S. Act is

concerned, it is in the matter of Reconstruction of societies. Section 19 reads as under :

> "19. Reconstruction of societies :- Where a proposal for a compromise or arrangement -
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> (a) between a society and its creditors, or
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> (b) between a society and its members,
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> is approved at a special general meeting, called for the purpose, the Registrar may, on the application of the society or of any member or of any creditor of the society, or in the case of a society which is being wound up, of the Liquidator, order reconstruction in the prescribed manner of the society."

. Reconstruction in case of society in liquidation is possible, when the proposal for compromise or arrangement between the society and its creditors or between the society and its members is approved by the special general body meeting called for the purpose. The Registrar may on the application of society or any member or any creditor of the society, or in the case of a society which is being

wound up, of the Liquidator, order reconstruction of the society. The Liquidator is required to apply under Form "H". In other words. the Registrar could have acted on an application of the Liquidator provided there is a proposal for compromise between the society and its creditors or between the society and its members and the Liquidator had applied to the Registrar. Another relevant provision is Section 103(5) of the M.C.S. Act which sets out that when an order of winding up has been passed and a Liquidator appointed, the officers of the society shall vacate their offices and while the winding up order remains in force the general body of the society shall not exercise any powers. Section 105(f) sets out that the Liquidator appointed under Section 103 shall have powers, subject to the rules and the general supervision, control and direction of the Registrar to make any compromise or arrangement with creditors or persons claiming tobe creditors or having or alleging themselves to have any claims, present or future, whereby, the society may be rendered liable and to take all such other steps as contemplated by Section 105. On an order of appointment of a Liquidator, it is the Liquidator who acts on behalf of the society in winding up to the exclusion of the shareholders. However, in a case of a society in liquidation, the Liquidator if he has received a proposal for compromise or

arrangement, even if satisfied, before he moves the Registrar, will have to summon the General Body to get their opinion. Such a construction will avoid undue influence being exercised on the liquidator and the members of the society can have their say. Needless to say if the proposal is not accepted by the Members, the Liquidator will not move the Registrar and proceed with the process of liquidation. An additional aspect of the matter is the order of R.B.I. cancelling the Banking licence and ordering liquidation. The Liquidator in these circumstances, cannot move the Registrar unless the scheme of compromise after approval by the Shareholder meets the approval of R.B.I.

7. Was it therefore, open to Respondent No. 8 to pass the impugned order. Assuming that a revision is maintainable, Respondent No. 8 could have exercised jurisdiction if Respondent No. 3 had jurisdiction. A perusal of the order, English translation of which has been supplied to us, would indicate that the persons present at the hearing was Respondent No. 4 herein and his advocate and the Registrar. It was urged before the Revisional Authority that the order cancelling the earlier order was without giving an opportunity to the Respondent No. 4 and as such was against the principles of natural justice and that the society

will have to bear tremendous loss if the permission is not granted to convert the society into a credit society. The Respondent No. 8 held that as Respondent No. 4 was not heard and it was against the principles of natural justice and accordingly set aside the order dated 8.4.2004 and thereafter granted permission to convert the bank into credit society without remanding the matter to Respondent No. 3 for re-consideration. The Revisional Authority did not consider whether the requirements of Section 17 of the MCS Act had been satisfied assuming Section 17 was attracted or whether Section 17 would not be attracted at all. From our discussion, it is clear that section 17 would come into play on the facts of the case only after the reconstruction of the society in liquidation is ordered under section 19 and that would mean setting aside the order of liquidation. In the instant case, Section 17 could never have come into play considering the society is still under liquidation. The question therefore, of conversion of the society, from a bank in liquidation into credit society, could not have been ordered unless the bank in liquidation was reconstructed as required under Section 19. The impugned order of Respondent NO. 8 is clearly therefore, arbitrary and without authority of law.

. The provisions of section 19 also could not have been invoked, as the Liquidator had not applied to the Registrar as there was no proposal for compromise or arrangement pending as required under Section 19. No proposal was placed before the general body meeting as there was no proposal before the liquidator to call a general body meeting to consider the proposal for compromise or arrangement. In fact no such proposal was also there before the Respondent No. 3 or Respondent No. 8. The order therefore, by Respondent No. 8 and or the earlier order by Respondent No. 3 were clearly without jurisdiction.

. In the light of the above, Rule made absolute in terms of Prayer Clause (b). In the circumstances of the case, there shall be no order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**